THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,	)	
	)	
v.	)	ID#: 1101004755
	)	
MICHAEL L. CHURCH,	)	
Defendant.	)	

ORDER

Upon Defendant's Motion to Withdraw Guilty Plea – *DENIED*

1. Rather than go to trial on September 20, 2011, Defendant pleaded guilty to one count of sexual abuse of child and one count of sexual abuse of child by a person in a position of trust. The court held two colloquies before accepting Defendant's plea. In the first, the court reviewed the evidence with Defendant, including DNA showing he impregnated the fifteen year old victim.

2. Defendant never claimed he actually was not guilty. He believed, considering his record and that no force was involved, the indictment and plea offer were "harsh." Defendant did not want to go to trial, but also did not want to plead guilty. (As discussed below, that still seems to be Defendant's view.)

3. At the end of the first colloquy, Defendant said he would accept the plea. After that, the court carefully and repeatedly warned Defendant that if the court accepted the plea, Defendant would not be able to come back later and ask to withdraw. Defendant told the court that he understood.

4. Rather than take the plea immediately, and openly taking into consideration what was at stake, the court gave Defendant more time to consult with counsel about what he wanted to do: go to trial or take the plea.

5. Approximately fifteen minutes after the first colloquy, Defendant appeared again, and counsel advised the court that Defendant would plead guilty. Defendant told the court that is what he wanted to do. The court then engaged in the second plea colloquy.

6. Before starting the second colloquy, the court again cautioned Defendant:

> . . . I want to make sure that we're all clear about this, that if you go through with this plea now, you are not going to have the opportunity to come back later and complain about Mr. Werb, or raise other things that we do not discuss today.

7. During the colloquy, Defendant admitted, twice, that he was in fact guilty.

8. Defendant also told the court, in writing and orally, that no one had threatened him or promised anything in order to get him to plea guilty. During the second colloquy, the court observed that the plea seemed to represent Defendant's accepting "the lesser of two evils." On the one hand, Defendant's guilty plea meant that he would receive a prison sentence of no less than seventeen years. On the other hand, if he were convicted at trial, the sentence would probably be much worse. Defendant agreed, aloud, with that observation.

9. The court also specifically asked Defendant, in writing and orally, whether he was satisfied with his court-appointed counsel. The court specifically mentioned Defendant's earlier dissatisfaction with counsel. Defendant, however, as he pleaded guilty, told the court that he was satisfied with counsel's efforts on his behalf.

10. At the end of the plea colloquy, the court asked: "One last time Mr. Church, what we are doing today, is that what you want?" Defendant replied, "Yes." The court then accepted his plea and scheduled the matter for sentencing after a presentence investigation. The court set the matter down for sentencing on December 8, 2011.

11. On November 21, 2011, Defendant filed this Motion to Withdraw Guilty Plea. Defendant filed a follow-up letter on January 11, 2012. The motion and

letter make similar claims.

12. Basically, Defendant now complains that he feels he is being "railroaded." Defendant reminds the court about his dissatisfaction with counsel, and he claims that in September 2011, he "very hesitantly excepted [sic] the plea." As presented above, despite his initial hesitation, Defendant did not hesitate when he actually pleaded guilty. To be sure, Defendant has always felt that the indictment was harsh and he was and is very unhappy with his predicament.

13. The record shows, however, that Defendant pleaded guilty because he is, in fact, guilty. Thanks to the DNA, the evidence is almost unassailable that Defendant had sexual intercourse with the fifteen year old victim. Even now, Defendant does not deny that were he to go to trial, he almost certainly would be convicted and he would be in as bad or worse situation than he is in now. Even if they were true, Defendant's complaints about the way trial counsel treated him do not make it likely that another lawyer would have done better for Defendant. Armed with compelling evidence, the prosecutor was emphatic during the plea colloquy that the State would not make a better plea offer and it was prepared then to present its damning evidence to a jury.

14. The record is clear that as much as Defendant did not want to plead guilty, he wanted to go to trial even less. Forced to choose between the

alternatives, when it mattered, Defendant chose to plead guilty and not go to trial. Even now, Defendant does not insist on a trial. He insists on a better deal, which is unrealistic.

15. Taking both colloquies, both of Defendant's submissions, and Defendant's situation into account, the court continues to find that Defendant's September 20, 2011, guilty plea was knowing, voluntary and intelligent. It was not the product of threat or misconduct by defense counsel. Defendant pleaded guilty because he is guilty and he did not want to risk the consequences of the jury trial that would have begun immediately, had he not pleaded guilty.

For the foregoing reasons, Defendant's November 21, 2011 Motion to Withdraw Guilty Plea is **DENIED.**

IT IS SO ORDERED.

Date: February 15, 2012

/s/ Fred S. Silverman
Judge

cc: Prothonotary (Criminal)
Annemarie Hayes, Deputy Attorney General
Dade D. Werb, Esquire
Michael L. Church, Defendant